



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 383

August 21, 2018

Alaska Court of Appeals

Opinion No. 2613

August 17, 2018

Reference: Mikos Cassadine Simmons
v
State of Alaska

SEARCH OF VEHICLE DURING “EXTENDED TRAFFIC STOP” IS ILLEGAL AND ALL EVIDENCE SEIZED AS A RESULT IS SUPPRESSED

FACTS:

Anchorage police officer stopped SIMMONS' vehicle because its tail lights were darkened, and its license plate was partially obscured by snow. SIMMONS did not have his driver's license in his possession, but he did furnish the officer with his name, date-of-birth, voter registration card, and his social security number. The officer returned to his patrol car and verified all his information. The officer prepared to issue a citation for driving without a license in his possession. The officer's sergeant heard the radio traffic confirming SIMMONS' identity and informed the patrol officer that SIMMONS "was a dangerous person" who was "associated with drugs and guns." The sergeant told the officer not to return to SIMMONS' car until he arrived on the scene to back him up. The officer completed filling out the traffic citation and waited for the sergeant.

When the sergeant arrived, he contacted SIMMONS by name and asked him for consent to search his vehicle. SIMMONS said no. At that time, the sergeant directed SIMMONS to get out of the car so he could pat him down. When no weapons were found, the sergeant ordered the female passenger (SIMMONS' girlfriend and mother of the child who was also in the vehicle) out of the car so officers could check the entire passenger compartment for weapons. During the vehicle search, one of the officers observed a sandwich-sized plastic baggie on the vehicle floor. The baggie contained smaller baggies inside.

The sergeant observed the same baggies during his purported check for weapons which, given the appearance of the substance in the baggies and the way they were packaged, he concluded contained heroin. SIMMONS was arrested, and the substance was later confirmed to be heroin.

SIMMONS' attorney moved to suppress the evidence found in SIMMONS' car, alleging the police had improperly extended the traffic stop.

ISSUE:

Did the police unlawfully extend the traffic stop?

HELD:

Yes. Authority for the seizure (of the vehicle) ends when tasks related to the traffic infraction are, or reasonably should have been, completed.

REASONING:

1. The officer's authority to detain a motorist during a traffic stop is limited by the purpose of the stop. The authority lasts only for the reasonable amount of time it takes to accomplish the purpose or mission of the traffic stop, to address the traffic violation that warranted the stop, and to attend to any related traffic concerns.
2. There was no justification for what ensued when the sergeant arrived on the scene (ordering SIMMONS to get out of his car and submit to a search for weapons).
3. Actions taken in the name of protecting officer safety must stem "from the mission of the traffic stop itself." Just as the federal constitution prohibits police from engaging in "detours from that mission", it likewise prohibits police from engaging in "safety precautions taken to facilitate such detours." However, that is exactly what happened in this case. (See RODRIGUEZ v US, Bulletin No. 375, where police held car at scene, after citation was issued, for drug detection K-9 walk around.)
4. These circumstances do not support the conclusion that the police searched SIMMONS for weapons in order to protect themselves during a traffic stop. Rather, the police artificially extended the traffic stop so that they could search SIMMONS for weapons.

NOTES:

Review of RODRIGUEZ, Bulletin 375 (illegally held vehicle during prolonged stop) and compare/contrast with ILLINOIS v CABALLES, Bulletin 292 where K-9 officer showed up while officer who stopped vehicle was in process of writing traffic citation – upheld this was not a "prolonged" stop.

Also review BROWN v STATE, Bulletin 328. This is the case that requires informing persons of "their right to refuse" consent to search. It also questions whether, under the Alaska Constitution, an officer conducting a routine traffic stop is even allowed to ask the driver for permission to conduct a search if the search is unrelated to the basis for the stop, and if the officer's request is not otherwise supported by a reasonable suspicion of criminality.

In the BROWN case, the court made it clear to Alaska law enforcement officers these types of searches violate Alaska's constitution, notwithstanding how the US Supreme Court has ruled on similar issues. Our court does not support "pretext stops" they feel are being used to ask consent to search vehicles. As they pointed out in BROWN, an officer can find many reasons (license plate violation, etc.) to stop vehicles. Many of these stops result in the party giving consent to search their vehicles. Alaska's Supreme Court does not like this approach, and states there must be a nexus related to the stop for the consent to be valid. In most cases, drugs are found during these types of searches and that evidence is likely to be suppressed.

There are many decisions, both state and federal, that allow for officers to direct persons to either stay in the vehicle, or in some circumstances order them out of a vehicle for safety purposes. However, there was no reason in this case to order SIMMONS or his girlfriend out of the car because identity was not an issue, nor were there any express circumstances associated with this stop that would allow for the search of the vehicle for weapons.